

IN THE SUPREME COURT

STATE OF ARIZONA

BOB DON PROSISE,	) Arizona Supreme Court
	) No. CR-20-0220-PR
Petitioner,	)
	) Court of Appeals Division One
vs.	) No. CA-SA 20-0014
	)
THE HONORABLE CHRIS L.	) Yavapai County Superior Court
KOTTKE, JUDGE OF THE SUPERIOR	) No. P1300CR2019901161
COURT OF THE STATE OF	)
ARIZONA, in and for the County of	)
Yavapai,	)
Respondent Judge,	)
	)
STATE OF ARIZONA,	)
	)
Real Party in Interest.	)
	)

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***AMICUS CURIAE* BRIEF OF THE  
ARIZONA PROSECUTING ATTORNEYS' ADVISORY COUNCIL  
IN SUPPORT OF THE STATE OF ARIZONA**

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## INTRODUCTION

The Arizona Prosecuting Attorneys' Advisory Council (APAAC) represents approximately 900 state, county, and municipal prosecutors. APAAC's primary mission is to provide training to Arizona's prosecutors. Additionally, the agency works collaboratively with community and criminal justice stakeholders on a variety of policy and public issues. On occasion, pursuant to [Arizona Rules of Civil Appellate Procedure Rule 16\(b\)\(1\)\(B\)](#), APAAC submits amicus curiae briefs on issues of significant concern. This is such an occasion.

APAAC has a substantial interest in the proper interpretation and application of the law, which supports prosecutors' goal of seeking justice. The court of appeals' decision added an element to one of the mostly commonly-charged misdemeanor crimes, disorderly conduct. As a result, there is the potential for a significant impact on the State's ability to hold offenders accountable and seek justice on behalf of crime victims.

For these reasons, APAAC joins with the Real Party in Interest, State of Arizona, in asking this Court to grant the petition for review and reverse the decision of the court of appeals.

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## ARGUMENT

### **I. The court of appeals erred in failing to follow precedence and adding an element to the crime of disorderly conduct.**

The court of appeals held that when “the State charges a defendant with ‘seriously disruptive behavior’ against a specific individual under A.R.S. § 13-2904.A.1, it must ‘prove that the victim’s peace was indeed disturbed.’ ” [\*Prosise v. Kottke\*, 249 Ariz. 75, ¶ 2, 466 P.3d 386, 387 \(App. 2020\)](#). The decision is erroneous, as it failed to follow precedence by this Court and instead added an element to the crime of disorderly conduct, contrary to the plain language of the statute.

[Arizona Revised Statute § 13-2904\(A\)\(1\)](#) makes it a crime if a person “with intent to disturb peace or quiet of a neighborhood, family or person, or with knowledge of doing so . . . engages in fighting, violent or seriously disruptive behavior.” In examining the statute, this Court found:

[T]he statute defining disorderly conduct does not require that one actually disturb the peace of another through certain acts. Rather, the statute requires the commission of certain acts ‘with intent to disturb the peace. . . or with knowledge of doing so.’

[State v. Miranda](#), 200 Ariz. 67, 69, ¶ 5, 22 P.3d 506, 508 (2001), citing [A.R.S. § 13-2904\(A\)](#). The *Miranda* Court made clear that there is no actual disturbance requirement for victims of disorderly conduct charges that involve disturbing a neighborhood. [\*Id.\*](#) Disorderly conduct charges with a neighborhood being

disturbed are judged on a reasonable person standard, and the testimony from people in the neighborhood “is not required to sustain the charge.” [\*State v. Johnson\*, 112 Ariz. 383, 385, 542 P.2d 808, 812 \(1975\)](#). The definition of disorderly conduct in [A.R.S. § 13-2904\(A\)\(1\)](#) does not differentiate between a person, a family, or a neighborhood. In other words, there are not different or additional elements that depend on the nature of the crime victim.

Further, the court of appeals’ decision is contrary to the plain language of [A.R.S. § 13-2904\(A\)\(1\)](#). To determine the meaning of the disorderly conduct statute, we look first to its language and “will ascribe plain meaning to its terms unless they are ambiguous.” [\*In re John M.\*, 201 Ariz. 424, 426, ¶ 9, 36 P.3d 772, 775 \(App. 2001\)](#). If a statute is unambiguous, courts apply it as written, without resorting to other rules of statutory interpretation. [\*State v. Gates \(Altamirano, Real Party in Interest\)\*, 243 Ariz. 451, 453, ¶ 7, 410 P.3d 433, 435 \(2018\)](#). A clear, unambiguous statute instructs the court on the legislature’s intent in enacting the statute without further need to interpret the statute. [\*State v. Holle\*, 240 Ariz. 300, 302, ¶ 11, 379 P.3d 197, 199 \(2016\)](#). In [A.R.S. § 13-2904\(A\)\(1\)](#), the focus of both the *mens rea* and the *actus reus* in the statute is the defendant. The statute sets no requirement regarding a victim’s mental state.

...

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Accordingly, the court of appeals erred by adding an element to the clear language of the statute, and requiring the State to prove that the peace of an individual victim was disturbed.

**II. The court of appeals' extraneous requirement of evidence regarding a victim's peace be disturbed hampers the State's ability to hold offenders accountable for their behavior and bring justice to crime victims.**

The potential impact of the court of appeals' decision is far-reaching, as disorderly conduct is one of the most commonly-charged misdemeanor crimes, with some Arizona jurisdictions issuing over 1000 charges per year. *See* Exhibit A. For example, in 2019, the City of Phoenix issued 1234 disorderly conduct charges and, in fiscal year 2019, the City of Tucson issued 6733. *Id.* Although these statistics reflect disorderly conduct filings broader than just those brought under [subsection 13-2904\(A\)\(1\)](#), the numbers illustrate the potential statewide impact of the Court of Appeals' holding.

In addition, a large number of the disorderly conduct cases that the State charges are domestic violence related. Reports from Arizona jurisdictions estimate that between 37-72% of the 2019 disorderly conduct charges were domestic violence related. Exhibit A. Domestic violence cases are notoriously difficult to prosecute. *See* Nat'l District Att'y Ass'n, *National Domestic Violence Prosecution Best Practices Guide* (2012), <https://ndaa.org/wp-content/uploads/NDAA-DV-White-Paper-FINAL-revised-July-17-2017.pdf>.

Compounding the challenge is that domestic violence is underreported, with only about 55% of all domestic violence related crimes being reported to the police.

U.S. Dep't of Just., Bureau of Just. Stat. (2012),

<https://www.bjs.gov/content/pub/pdf/ndv0312.pdf>. When domestic violence crimes are reported, victims frequently minimize the incident, deny it happened, fault him or herself, or refuse to participate in prosecution. *National Domestic Violence Prosecution Best Practices Guide*, *supra*.

The subjective test which the court of appeals interjected into the elements of disorderly conduct magnifies the perilous situation in which domestic violence victims often find themselves, as it requires them to admit to an injury, namely their peace being disturbed, before the standard for conviction can be met. Under the *Prosisie* holding, domestic violence victims must therefore choose between directly confronting the offender with testimony of injury or allowing the abuse to continue without consequence. Conversely, the objective test for assessing disorderly behavior, which aligns with both *Miranda*, *supra*, and the plain language of the statute, enables the State to hold offenders accountable without unduly subjecting the victim to confrontation.

In summary, the error of court of appeals' decision is not limited to misapplications of the law. Rather, the holding can impact cases across Arizona,



resulting in offenders not being held accountable and leaving crime victims vulnerable.

### CONCLUSION

The court of appeals erred in failing to follow this Court's holding in [\*Miranda\*](#), *supra*, and instead requiring the State to prove an element that does not exist in the disorderly conduct statute. APAAC respectfully requests that this Court grant review, vacate the court of appeals' opinion, and direct the court of appeals to reconsider the case.

RESPECTFULLY SUBMITTED this 30th day of September, 2020.

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# EXHIBIT A

Jurisdiction	Term	Number of Cases	Number of DV Cases	% DV
Phoenix	2019	1234		
Mesa	2019	1771	965	54%
Gilbert	Fiscal 2019	828	600	72%
Tucson	Fiscal 2019	6733	4276	64%
Yuma County	Fiscal 2019	360	266	65%
Maricopa County	Fiscal 2019	536	291	52%
Yavapai County	Fiscal 2019	926	609	66%
Coconino County	Fiscal 2019	139	51	37%
Total		12554	7025	56